

ORDINANCE NO. 90-2-7

**A RESOLUTION AMENDING THE RESOLUTION ESTABLISHING AN
OCCUPATIONAL PRIVILEGE FEE STRUCTURE FOR THE CITY
OF RED BAY, ALABAMA**

An Ordinance amending the Resolution Establishing an Occupational Privilege Fee Structure for the City of Red Bay, Alabama to establish a privilege license fee on persons engaged in any vocation, occupation, calling, or profession in the City of Red Bay who is not required by law to pay any license or privilege tax to either the State of Alabama or the County as set out herein.

Section 1. Definitions The following terms, when used in this article, shall have the respective meanings ascribed to them;

Person: Shall mean any natural person. Whenever the word "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the work as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

Employee: Any person engaging in or following any trade, occupation, or profession within the meaning of the term "trade, occupation, and profession" as defined herein.

Employer: Shall mean and include any person business, firm, corporation, partnership, association or any other kind of organization who or that employs any person in any vocation, occupation, and trade, calling or profession in Red Bay, Alabama, as defined herein.

Gross receipts, compensation: Each term shall have the same meaning and both words shall mean and include the total gross amount of all salaries, wages, commission, bonuses, or other money payment of any kind, or any other consideration having monetary value, which a person received from, or is entitled to receive from or be given credit for by such person's employer for any work done or personal services rendered in any trade, vocation, occupation, or profession, including any kind of deductions before "take home" pay is received, but the terms "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesmen or other workers as allowance or reimbursement for travelling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer.

Licensee: Any person required to file a return or to pay a license fee under this ordinance.

Trade and vocation, Occupation and Profession: The doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind or position or job within the city by any clerk, laborer, tradesman, manager, official, or other employee, including any non-resident of the City who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for

whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation if such partner or officer receives a salary for personal services rendered in the business of such firm or corporation. But they shall not mean or include domestic servants employed in private homes and shall not include businesses, profession or occupations for which license fees are required to be paid under any General License Code of the city, county, or to the State of Alabama or the county by any of the following: Chapter 12, Article 2, Title 40; 40-21-50, 40-21-52, 53, 54.

"Trade, occupations, and professions" shall also mean and include the holding of any kind of officer or position, either by election or appointment, by any federal, state, county, or city officer or employee where the services of such official or employee are rendered within the City.

The singular shall include the plural and vice versa, and the masculine shall include the feminine and neuter.

Section 2. License fees required. It shall be unlawful for any person to engage in or follow any trade, vocation, occupation, or profession, as defined in Section 1, within the City on and after the first day of March 1, 1989, without paying license fees for the privilege of engaging in or following such trade, vocation,

occupation, or profession, which license fees shall be measured by one-half ($1/2$) of one (1) percent of the gross receipts of each such person.

Section 3. Proration of compensation for work done within and without city. In cases where compensation is earned as a result of work done or services performed both within and without the city, the license fees required under this article shall be computed by determining upon the oath of the employer or if required, upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the city.

Section 4. Employers to withhold license fees and file returns. Each employer shall deduct from each payment due each employee the amount of the license fees measured by one-half ($1/2$) of one percent (1%) of the compensation due each employee. The payments required to be made on account of such deductions by employers shall be made monthly to the city for the monthly periods ending on the last calendar day of each month of each year, on or before the twentieth day of the month next following the end of each such monthly period. Each employer shall at the same time make a return in connection therewith on a form made available to such employer by the city. The failure or omission by any employer to deduct such license fees shall not relieve an employee from the

payment of such license fees and compliance with the requirements for making returns as provided in this article, or with any regulations promulgated under this ordinance. Each employer shall file in the City Clerk's Office, on or before January 31 of each year, a return on a form made available and shall show the gross amount of compensation of each employee, the amount of the license fees deducted and paid by such employer for all or any part of the preceding calendar year, and the last known address of each employee. Each employer shall keep accurate records of all such compensation, deductions, license fees, payments, and returns. Such records shall be kept and maintained by each such employer for not less than five years subsequent to the date such compensation was earned.

Section 5. Returns to be filed and fees paid by employees.

When a monthly return as required by Section 4 hereof is not filed by an employer and the license fees are not paid to the city by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the City Clerk's Office on or before the first day of the second month next following the end of such monthly period. The return shall show the employee's gross receipts subject to license fees for such month. the employee shall also file a return with the Revenue Department on or before January 31 of each year

thereafter in which the employer has failed to file the annual report required by Section 4., and shall show therein the gross receipts subject to license fees during the preceding calendar year and in addition to the gross receipts earned such return shall show such other pertinent information as may be required.

Each person making such a return shall pay to the city the amount of license fees due; provided, however, that any portion of the license fees withheld by the employer shall be deducted and only the balance, if any, shall be due and payable at the time of filing said return. Each employee shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employee for not less than five years subsequent to the date such compensation was earned.

Section 6. Appointment of Director of Revenue. There is hereby created the office of Director of Revenue who shall be appointed by the Mayor and Council, to serve at the pleasure of the same. The City Clerk may serve as Director of Revenue.

Section 7. Duties of Director of Revenue. It shall be the duty of the director of revenue to collect and receive all license fees imposed by this ordinance and to keep records showing the amounts received by such director from each employer. All monies received by the director of revenue shall be turned over daily to the city comptroller.

Section 8. Investigative Powers of Director of Revenue. The director of revenue or any agent or employee designated by the director is hereby authorized to examine the books, papers, and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fees due under the terms of this article by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the director of revenue or to the director's duly authorized agent or employee, the means, facilities, and opportunity for the making of such examination and investigation. The director of revenue is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return and to this end may compel the production of books, papers, and records and the attendance of all persons before such director, whether as parties or as witnesses, whom the director believes to have knowledge of such gross receipts or compensation.

Section 9. Information to be confidential. Notwithstanding any ordinances to the contrary, any information gained by the director of revenue, or any other official or agent or employee of the city as a result of any returns, investigations, hearings, or verifications required or authorized by this article, shall be

confidential, except for official purposes, or in accordance with the proper judicial order, or the enforcement of this article, and any person or agent divulging such information shall, upon conviction, be subject to a fine not exceeding \$500.00.

Section 10. Regulations may be promulgated. The City Council may by resolution prescribe, adopt, promulgate, and enforce regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

Section 11. Interest and penalties. (a) All license fees imposed by this ordinance which remain unpaid after they become due shall bear interest at the rate of eight (8%) percent per annum and any person who has failed to pay such license fees when the same became due shall also be charged a penalty of ten (10) percent of the amount of such unpaid license fees. Any employer or other person who fails or refuses to withhold any license fees payable under this ordinance, or who fails to pay such fees, after withholding the same, to the City at the time it is due as proved under the terms of this ordinance, shall become liable to the city for such fees, as well as for the interest thereon at the rate of

eight (8%) percent per annum and for the aforesaid penalty; provided, however, the minimum penalty imposed against such employer or other person shall be one dollar (\$1.00). (b) Any employee or other person who shall fail, neglect, or refuse to pay a license fee as by this ordinance required, or any employer who shall fail to withhold said license fees or to pay over to the city such license fees, penalties, or interest imposed by this ordinance, or any employer or other person who shall refuse to permit the director of revenue, or any agent or employee designated by the director in writing, to examine such employer's or other person's books, records, and papers, or who shall knowingly make any incomplete, false, or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid to the payment of the whole or any part of a license fee shall, upon conviction, be subject to punishment as provided in Section 8 for each offense. Such criminal penalties shall be in addition to the penalties imposed under subsection (a) of this Section.

Section 12. Use of license fees. Fifty (50%) percent of all monies derived from license fees under the provisions of this ordinance shall be paid to the city and placed to the credit of a special revenue fund of the city, and shall be pledged to the Red Bay Education Improvement account, and the remaining fifty (50%)

percent pledged to the Economic Development Special Fund of the City. Economic development shall include, but not be limited to, the development of an industrial park including acquisition of land through the Industrial Development Board of the Town of Red Bay, construction of a sewer lagoon and any other sewer project which the City Council of Red Bay may deem necessary, medical care such as doctor recruitment, equipment repair and purchase and any and all other medical related items or services deemed necessary for the benefit of the City of Red Bay by the Red Bay governing body. All expenditures will require the genuine signature of all persons so authorized to approve same. No facsimile, copy, or stamp shall constitute approval.

Section 13. Publication of Report. A report to the people of Red Bay of all the revenues and expenditures shall be run in The Red Bay News on a quarterly basis to inform the people of how the tax is being used.

Section 14. Severability. The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer or licensee or class or persons, shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the intent of the council to ordain and enact each provision, Section, paragraph, sentence and part thereof, separately and independently of each other.

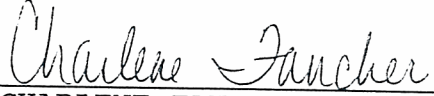
Section 15. Repeal of Resolution and Ordinances. All resolutions and ordinances or parts of resolutions and ordinances in conflict with this Ordinance are to the extent of such conflict are hereby repealed and specifically amends Ordinance No. 89-1-20.

Section 16. Effective date. This Ordinance shall be in full force and effect on and after April 1, 1990, and from year to year thereafter.

Section 17. Adopted and approved on this the 7th day of February, 1990.


BILLY M. BOLTON, MAYOR

ATTEST:


CHARLENE FANCHER, CITY CLERK